vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1355 OF 2005
IN
SUIT NO.1916 OF 2004

Satyavati R. Ruia & Ors. ... Plaintiffs

V/s.

New India Assurance Co. Ltd. ... Defendant

Mr.S.Parikh for Plaintiff
Mr.P.G. Lad for Defendant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 28, 2006**

P.C.:

. The Defendant has filed the present Motion for rejection of the plaint under Order 7 Rule 11 of the Civil Procedure Code. According to the Defendant, this Court has no jurisdiction to entertain the suit. It is contended on behalf of the defendant that the cause of action for filing of the plaint is that the Defendant has allegedly not handed over possession of the suit premises which are owned by the Plaintiff and the prayers in the plaint according to the defendant, are for possession of the suit premises and mesne profits. It is submitted on behalf of the plaintiff that in view of section 33 of the Maharashtra Rent Control Act, this Court's jurisdiction is ousted and the plaintiff would have to file a suit before the Small Causes Court for possession and mesne profits.

2. As rightly pointed out by the learned Counsel for the Plaintiff, the suit has been filed for possession as also for damages. The possession of the suit premises has already been handed over to the plaintiff on 17.1.2006. The plaintiffs had filed a suit before the Small Causes Court being TE & R Suit No.193/206 of 2003 for recovery of possession of the suit premises wherein the Defendant has raised an objection with regard to the jurisdiction of the Small Causes Court.

3. In my view, the Motion must be dismissed since the suit for damages will not lie before the Small Causes Court. The possession of the suit premises has already been handed over and therefore, the plaintiffs' claim for damages would lie before this Court.

4. Motion dismissed.